

ESCAFCA

**AGREEMENT FOR
ON-CALL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this ____ day of _____, 2011, by and between the EASTERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY, a political subdivision of the State of New Mexico, hereinafter called ESCAFCA, and _____, hereafter called ENGINEER.

WITNESSETH:

1. WHEREAS, the execution of the hereinafter described services is necessary for ESCAFCA to accomplish its mission of providing flood control for the ESCAFCA area, and
2. WHEREAS, based on a publicly advertised request for engineering services, the submittal of an engineering proposal by ENGINEER, and recommendation of ESCAFCA's Selection Advisory Committee, the ESCAFCA Board of Directors has authorized the Executive Engineer of ESCAFCA to negotiate an agreement with ENGINEER, and
3. WHEREAS, ESCAFCA desires to engage ENGINEER to render services as hereinafter set forth.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

SECTION 1 - SERVICES TO BE PROVIDED BY ENGINEER

- 1.1 ENGINEER shall provide the following services upon request by ESCAFCA, but ESCAFCA shall have no obligation to request any services from ENGINEER:
 - A. The full spectrum of engineering services related to establishing a flood control program, including, but not limited to planning; coordination and communication; public meetings; surveys; design; property ownership research and documentation; preparation of construction documents, and bidding; construction administration; preparation of operation and maintenance manuals; flood plain administration; administrative support to the Board and Executive Engineer [research, preparation of documents, maps, exhibits, etc]; drainage reviews for proposed development; and other duties as assigned.
 - B. Other related tasks as agreed.
 - C. The total amount of compensation paid under this Agreement shall not exceed \$_____.
- 1.2 Services shall be provided as either Emergency or Task-Based Engineering Services, as described herein. Emergency services shall include all services which are required to be

provided on an urgent and non-recurrent basis to protect the public health, safety or welfare, and which are not completed or anticipated by an existing task schedule.

SECTION 2 - PRODUCT/SERVICES

2.1 Emergency Engineering Services are anticipated to be performed as follows:

- A. Work will be performed at mutually agreeable times.
- B. ESCAFCA will notify ENGINEER by electronic copy when work needs to be done. The electronic copy shall include a description of the work needed and the not-to-exceed or firm fixed price amount. ENGINEER shall promptly respond as to if and/or when the work will be done.
- C. The “written description” and “task agreement” identified in Section 2.2, herein, will not be required for the Emergency Engineering Services.

2.2 The following provisions apply to Task-Based Engineering Services that are required by ESCAFCA:

- A. ESCAFCA shall outline in writing the task(s) to be performed and communicate the scope and requirements to the ENGINEER and or other qualified engineers with whom ESCAFCA has an on call contract.
- B. ENGINEER shall respond as to whether it can accomplish the task(s) and shall provide a written statement of work, an estimated cost for services and a proposed schedule to complete the work.
- C. If ESCAFCA and ENGINEER are agreeable to the terms of the task(s), ESCAFCA may give written authorization to proceed to ENGINEER. ESCAFCA reserves the right to rescind the task request and/or to solicit terms from other engineers having similar contracts with ESCAFCA.
- D. At the discretion of ESCAFCA, ESCAFCA and ENGINEER may jointly prepare and execute a Task Order which will address, at a minimum, the following:
 - 1. Description of service/task(s) to be provided.
 - 2. Fee amount and fee basis, with estimated fee and hours for time and materials projects and total fee for lump sum projects.
 - 3. Expected date of completion of the project or specified completion dates.
 - 4. Names of ESCAFCA’s and ENGINEER’s contacts.
 - 5. Statement of any special terms and conditions necessary to perform the project.
 - 6. Signed authorization to proceed by ESCAFCA.
 - 7. Signed acceptance of project by ENGINEER returned to ESCAFCA.

8. ESCAFCA may include in the Task Order liquidated damages for failure to meet specified completion dates.

SECTION 3 - FEES

- 3.1 Fees for services performed under this Agreement shall be as shown on the attached Exhibit "A" - Fee Schedule. The Fee Schedule shall remain in effect for the term of this contract, including any extensions.. Any mutually agreed upon change(s) to the fee schedule shall be authorized by ESCAFCA's Executive Engineer and shall be subject to approval by the Board of Directors.
- 3.2 It is anticipated that the employee classifications of ENGINEER listed on Exhibit "A" will perform the work and that no other employee classifications of ENGINEER will provide these services, except by written authorization from the ESCAFCA Executive Engineer.
- 3.3 The fees for services provided will be paid not more often than once a month, upon approval by ESCAFCA of a payment request and following certification that the tasks are complete and that all materialmen and subcontractors have been paid in full. ESCAFCA may require lien releases from ENGINEER.
- 3.4 The fees in Exhibit "A" do not include New Mexico Gross Receipts Tax ("NMGRT"); however, the NMGRT will be added to the total fee for work performed in each invoice as a separate invoice item and will be paid to ENGINEER by ESCAFCA, if applicable.
- 3.5 Other Costs:
 - A. Mileage shall be paid at the New Mexico State government rate listed for the first day of the month in which the task was authorized.
 - B. Reproduction costs for reports, contract documents and record drawings will be paid directly by ESCAFCA, unless otherwise specified in a Task Order. ESCAFCA will select the printing firm for this work.
 - C. For all special services billings, such as reproduction, photography and/or third party services, ENGINEER shall furnish payroll certifications or third party invoices to substantiate all charges. For such purposes, the books of account of ENGINEER shall be subject to audit by ESCAFCA. ENGINEER shall, for all billings, keep work and cost records on such forms and in such manner in accordance with generally accepted accounting principles. Any such documents relating to work for ESCAFCA shall be subject to audit by ESCAFCA or its agents.

SECTION 4 - COMPLETION AND EXPIRATION DATES

- 4.1 This Agreement shall be for one (1) year from date of execution; however, services that are in progress or are incomplete at the end of the year shall be completed pursuant to this Agreement, without requiring an extension of the Agreement term. This Agreement may be

extended for an additional year or years, up to a maximum of three (3) years of extensions, in writing at the initiative of and authorization of ESCAFCA, with concurrence by the ENGINEER.

SECTION 5 - AUTHORIZED APPROVALS

5.1 The following representatives of ESCAFCA are authorized to request Emergency Engineering Services:

Executive Engineer
Board Chair

5.2 Authorization for Task-Based Engineering services shall be by the Executive Engineer.

5.3 Those employees of the ENGINEER who are authorized to accept work shall be as designated on Exhibit "B".

5.4 Any mutually agreed upon change(s) to the fee schedule shall be authorized by ESCAFCA's Board of Directors. Once authorization is obtained, the fee schedule with the change(s) becomes the new Exhibit A rendering the prior Exhibit A null and void for future engineering services.

SECTION 6 – TERMINATION BY ESCAFCA

6.1 It is agreed that this is a contract for professional services, and ESCAFCA may, at its option, terminate this Agreement in total or in part with no less than seven (7) days' written notice and without assigning any reason therefore. Then, and in that event, ENGINEER shall receive as compensation in full, for services satisfactorily performed to the date of such termination, any work under order at the agreed upon rates, unless termination is for cause, in which event the amount payable shall be determined by negotiation.

SECTION 7 – ESCAFCA RECORDS

7.1 ESCAFCA will make available to ENGINEER for his or her use all of its maps, records, laboratory tests, or other data pertinent to the task(s) to be performed by ENGINEER pursuant to the Agreement and, if requested, maps, records or other materials available to ESCAFCA from any other public agency or body. ENGINEER may rely on any of the data provided to it by ESCAFCA.

SECTION 8 - OWNERSHIP OF PLANS AND DOCUMENTS

- 8.1 All survey notes, tracings, plans, estimates, specifications, investigations and studies, calculations and descriptions, and maps prepared by ENGINEER, or furnished to ENGINEER by ESCAFCA, solely in the performance of this Agreement shall be delivered to and become the property of ESCAFCA and shall be public records. Delivery shall be in hard copy form and on computer disc and shall be made at the time of final payment under any request for services, whether by emergency or task-based requests. ENGINEER may, at his or her own expense, have copies made of any work products furnished to ESCAFCA under this Agreement.
- 8.2 ESCAFCA acknowledges that the ENGINEER's plans and specifications are instruments of professional services. ESCAFCA agrees that the ENGINEER shall not be liable for any damages, claims, and/or losses arising out of any reuse of the plans and specifications in other projects.

SECTION 9 - CHANGES

- 9.1 At any time after the task(s) has been completed, the parties may agree in writing to extend or modify the work and to revise the work accordingly.
- 9.2 Compensation to ENGINEER for his or her services in making such changes shall be in accordance with the fees set forth in Exhibit "A" and shall be due and payable according to Section 3.

SECTION 10 - ASSIGNMENT

- 10.1 This Agreement shall not be assignable, except at the written consent of the parties hereto, and it shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

SECTION 11 - GENERAL PROVISIONS

- 11.1 Before this Agreement is executed, ENGINEER shall provide proof of professional liability insurance in an amount of \$1,000,000.00 and general liability insurance in an amount of \$1,000,000.00. Professional liability insurance shall be in effect starting at the execution of this Agreement and shall remain in effect for the term of the Agreement, including any extensions.
- 11.2 ENGINEER shall place his or her professional engineer's seal of endorsement, licensed in the State of New Mexico, (or professional surveyor, when appropriate) on all completed work products submitted to ESCAFCA, where required to do so by law.
- 11.3 Nothing herein shall be construed as creating the relations of employer and employee between the parties hereto, and ENGINEER shall be deemed to be at all times an independent contractor.

- 11.4 ENGINEER shall indemnify and save harmless ESCAFCA from all liability from claims for damages arising out of the negligence or wrongful acts of the ENGINEER in performing his or her duties under this contract. Such indemnification shall include liability, claims, damages, losses or expenses arising out of bodily injury to persons or damage to property caused by, or resulting from, the indemnifying party's and/or its employees', agents' or subcontractors' own negligent and/or intentional wrongful acts, omissions or performance or failure to perform its obligations and duties under the terms and conditions of this Agreement. The indemnification hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for each party, pursuant to laws, regulations, or policies of insurance, provided, however, this save harmless and indemnification clause is subject to the immunities, provisions and limitations of the Tort Claims Act (Section 41-4-1 et seq., N.M.S.A. 1979 comp.) and any amendments thereto.
- 11.5 This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico.
- 11.6 All notices with respect to this Agreement shall be in writing and shall be delivered personally, via confirmed electronic copy, or sent postage prepaid by United States Mail, via certified mail, return receipt requested, to the addresses set forth below or other such addresses as hereafter specified in writing by one PARTY to the other:

ESCAFCA	Engineer
P.O. Box 638	Address
829 Camino del Pueblo.	City, state zip
Bernalillo, New Mexico 87004	Attn:
Attn: Executive Engineer	

Notices shall be deemed received on the date of their actual receipt or refusal of service.

- 11.7 This Agreement contains the entire Agreement between the PARTIES hereto, and all prior understandings, oral or written, by the PARTIES hereto with respect to this Agreement are hereby null and void. No variations, modifications, supplements, waivers or changes herein or hereof shall be binding upon any PARTY hereto unless set forth in a document duly executed by or on behalf of such PARTY.
- 11.8 If any provision of this Agreement, or the application thereof to a person or circumstance, shall be determined to be invalid or unenforceable to any extent, the remainder of the Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby, and such provisions shall be enforced to the greatest extent permitted by law.
- 11.9 Each individual signing for each of the PARTIES hereunder warrants and represents that he/she is an authorized agent of such PARTY, on whose benefit he/she is executing this Agreement, and is authorized to execute the same.
- 11.10 Each PARTY agrees to execute such other and further instruments and documents as may be necessary or proper in order to complete the transactions contemplated by this Agreement.

- 11.11 Neither party shall be in default under this Agreement unless and until the non-defaulting party provides written notice to the defaulting party setting forth with specificity the nature of any non-compliance or breach of this Agreement and the defaulting party fails to cure such non-compliance or breach with thirty (30) days after receipt of such notice (or such longer period as may be reasonably necessary so long as the defaulting party commences to cure such non-compliance or breach within such thirty day period and thereafter diligently pursues such cure to completion). In the event of non-compliance for breach of this Agreement that is not cured within the foregoing cure periods, the non-defaulting party shall have the right to seek any remedies the non-defaulting party may have under law or in equity for such non-compliance or breach.
- 11.12 In any proceeding, dispute or controversy associated with or arising out of this Agreement or a claimed or actual breach thereof, the prevailing party shall be entitled to reimbursement of its costs and reasonable attorney's fees.
- 11.13 An event of "Force Majeure" occurs when an event beyond the control of the Party claiming Force Majeure prevents such Party from fulfilling its obligations. An event of Force Majeure includes, without limitation, acts of God (including floods, hurricanes and other adverse weather), war, riot, civil disorder, acts of terrorism, disease, epidemic, strikes and labor disputes, actions or inactions of government or other authorities, law enforcement actions, curfews, closure of transportation systems or other unusual travel difficulties, or inability to provide a safe working environment for employees.

In the event of Force Majeure, the obligations of ENGINEER to perform the services shall be suspended for the duration of the event of Force Majeure. In such event, ENGINEER shall be equitably compensated for time expended and expenses incurred during the event of Force Majeure and the schedule shall be extended by a like number of days as the event of Force Majeure. If services are suspended for thirty (30) days or more, ENGINEER may, in its sole discretion, upon five (5) days prior written notice, terminate this Agreement or the affected Work Order, or both. In the case of such termination, in addition to the compensation and time extension set forth above, ENGINEER shall be compensated for all reasonable termination expenses.

- 11.14. ESCAFCA grants to ENGINEER right of entry for all property owned by ESCAFCA. It will be ENGINEER's responsibility to gain right of entry, if it so chooses, for all property not owned by ESCAFCA for ENGINEER, its employees, agents and subcontractors, upon the project site for the purpose of providing the services. ESCAFCA will make reasonable efforts to assist ENGINEER in gaining such permission from other property owners. ESCAFCA recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the area being studied, despite the use of reasonable care.
- 11.15. The ENGINEER's Response to ESCAFCA's Request for Proposals and the Request for Proposal, pursuant to which this Agreement is made is incorporated by reference herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this _____ day of _____, 2011.

**Eastern Sandoval County Arroyo
Flood Control Authority (ESCAFCA)**

Attest:

By: _____
Secretary/Treasurer

Date: _____

(SEAL)

By: _____
Chair

ENGINEER

By: _____

New Mexico Professional Engineer # _____

Federal Taxpayer ID # _____